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SEP 08 2006

In re Application of

OFFICE OF PETITIONS

Chris Bradford et al.

ON PETITION

Application No. 10/717,443 Filed: November 21, 2003

Attorney Docket No. 051344-5017

This is a decision on the petition, filed March 31, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

## The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is not final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office Action mailed April 18, 2005. Petitioner was notified by Advisory Action mailed October 13. 2005 that the response filed September 21, 2005 did not place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed March 2, 2006.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;
  - (2) the petition fee required by 37 CFR 1.17(I);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a

question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

The petition does not satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of April 18, 2005, within the time period for response. The only proper reply to a final Office action is an amendment placing the application in prima facie condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application. Since the amendment submitted with the petition has been referred to the examiner, who has indicated that the amendment still does not prima facie place the application in condition for allowance, the response required for a renewed petition must be a Notice of Appeal and requisite fee, or the filing of a continuing application under the terms set forth in 1031 O.G. 11.

Petitioner must submit a proper reply to the final Office action mailed on April 18, 2005, with any renewed petition. Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.

A courtesy copy of an Advisory Action is included.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned

Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions

Attachment: Advisory Action

## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
10/717,443	BRADFORD ET AL.		
Examiner	Art Unit		
Anthony J. Green	1755		

	Anthony J. Green	1755	
The MAILING DATE of this communication appe	ars on the cover sheet with the c	orrespondence add	ress
THE REPLY FILED 31 March 2006 FAILS TO PLACE THIS AP	PLICATION IN CONDITION FOR A	ALLOWANCE.	
1.  The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a No a Request for Continued Examination (RCE) in compliance time periods:	ving replies: (1) an amendment, aff tice of Appeal (with appeal fee) in (	idavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)
a) The period for reply expires 6 months from the mailing date	of the final rejection.		
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire a Examiner Note: If box 1 is checked, check either box (a) or (	ater than SIX MONTHS from the mailing b). ONLY CHECK BOX (b) WHEN THE	g date of the final rejecti	on.
TWO MONTHS OF THE FINAL REJECTION. See MPEP 70 Extensions of time may be obtained under 37 CFR 1.136(a). The date		36(a) and the appropria	to ovtoncion fee
have been filed is the date for purposes of determining the period of extunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	ension and the corresponding amount shortened statutory period for reply origi than three months after the mailing da	of the fee. The appropr inally set in the final Offi	iate extension fee ce action; or (2) as
2. The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any external Notice of Appeal has been filed, any reply must be filed AMENDMENTS	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of th	
3. X The proposed amendment(s) filed after a final rejection,	but prior to the date of filing a brief.	will not be entered b	ecause
(a) ⊠ They raise new issues that would require further co			00000
(b) They raise the issue of new matter (see NOTE belo		•	
(c) X They are not deemed to place the application in bet	ter form for appeal by materially re	ducing or simplifying	the issues for
appeal; and/or			
(d) They present additional claims without canceling a		ected claims.	
NOTE: <u>See attachment</u> . (See 37 CFR 1.116 and 4			
4. The amendments are not in compliance with 37 CFR 1.13		mpliant Amendment	(PTOL-324).
5. Applicant's reply has overcome the following rejection(s)	<del></del>		
<ol> <li>Newly proposed or amended claim(s) would be al non-allowable claim(s).</li> </ol>		·	_
7.  For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is provided the status of the claim(s) is (or will be) as follows:		ll be entered and an e	explanation of
Claim(s) allowed: 2,3,5,6,8,9,22 and 23.			
Claim(s) objected to: 10-12,14-17 and 28-32.			
Claim(s) rejected: <u>7,10-17,24-27,29,30,32,33</u> .			
Claim(s) withdrawn from consideration:			
AFFIDAVIT OR OTHER EVIDENCE B. ☐ The affidavit or other evidence filed after a final action, bu because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e).			
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to of showing a good and sufficient reasons why it is necessary	vercome <u>all</u> rejections under apper y and was not earlier presented. S	al and/or appellant fa ee 37 CFR 41.33(d)(	ils to provide a 1).
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	n of the status of the claims after e	ntry is below or attach	ned.
11. The request for reconsideration has been considered bu	t does NOT place the application in	n condition for allowa	nce because:
12. Note the attached Information Disclosure Statement(s).	(PTO/SB/08) Paper No(s)		
		Anthony J. Green Primary Examiner	

Art Unit: 1755



Application No.

Application/Control Number: 10/717,443

Art Unit: 1755

## ATTACHMENT TO ADVISORY ACTION

Continuation of 3. Note:

In claim 10 as amended, the phrase "wherein the hectorite clay comprises about 0.1 to 10 wt. % hectorite clay" makes no sense and is therefor confusing.

In claim 13 as amended, the phrase "adding the treated beneficiated or unbeneficiated natural hectorite mixture" now lacks proper antecedent basis.

In claim 14 as amended, the phrase "the metal flakes" now lacks proper antecedent basis.

In claim 23 as amended, the change from 1% to 0.1% is a new issue.